

RECORDATION NO. 8233-14
FILED & RECORDED

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INTERSTATE COMMERCE COMMISSION

FIRST AMENDMENT AND SUPPLEMENT TO CONDITIONAL SALE AGREEMENT
made as of March 25, 1976, between FMC Corporation and SSI Rail Corp.,

W I T N E S S E T H:

WHEREAS, FMC Corporation ("Builder") and SSI Rail Corp. ("Railroad") heretofore entered into that certain conditional sale agreement made as of March 5, 1976 ("the Conditional Sale Agreement"), providing for the construction, sale and delivery by Builder and the purchase by Railroad of one hundred (100) 50' 60" 70-ton capacity general service, single sheath boxcars numbered GMRC 0650 through GMRC 0699, inclusive, and VIR 4050 through VIR 4099, inclusive ("the Equipment");

WHEREAS, the Conditional Sale Agreement was filed and recorded with the Interstate Commerce Commission on March 9, 1975, and has been assigned Recordation No. 8233;

WHEREAS, Builder has delivered and Railroad has accepted the Equipment;

WHEREAS, Birmingham Trust National Bank ("Assignee") has agreed to accept an assignment of the Conditional Sale Agreement as hereinafter amended and supplemented and to pay Builder the consideration for such assignment on the condition that the Conditional Sale Agreement be so amended and supplemented and on the further condition that IteI Corporation ("Guarantor") guarantee to Assignee under a guarantee agreement of even date herewith ("the Guaranty") the full payment of the indebtedness owed by Railroad and the full performance of the obligations of Railroad under the Conditional Sale Agreement as so amended and supplemented; and

WHEREAS, as an inducement to Assignee to accept the assignment of the Conditional Sale Agreement and to pay Builder the consideration for such assignment, Builder and Railroad have agreed to amend and supplement the Conditional Sale Agreement as hereinafter set forth.

NOW, THEREFORE, in consideration of the premises and of the mutual agreements hereinafter set forth, Builder and Railroad hereby agree as follows:

(1) Section 1 of the Conditional Sale Agreement, entitled Construction and Sale, is hereby amended and supplemented by deleting therefrom the first sentence thereof and adding in lieu thereof the following:

"Builder will construct one hundred (100) 50' 6" 70-ton capacity general service, single sheath, boxcars, numbered GMRC 0650 through GMRC 0699, inclusive, and VIR 4050 through VIR 4099, inclusive (such boxcars being hereinafter called the Equipment)."

(2) Section 3 of the Conditional Sale Agreement, entitled Purchase Price and Payment, is hereby deleted in its entirety and the following added in lieu thereof:

"3. Purchase Price and Payment. The purchase price for each unit of the Equipment numbered VIR 4050 through VIR 4099, inclusive, GMRC 0650 through GMRC 0658, inclusive, and GMRC 0690 through GMRC 0699, inclusive, shall be \$29,815.88. The purchase price for each unit of the Equipment numbered GMRC 0659 through GMRC 0689, inclusive, shall be \$29,019.96. The total purchase price for the Equipment shall be \$2,956,914.48.. Railroad hereby acknowledges itself to be indebted to Builder in the amount of the total purchase price for the Equipment and hereby promises to pay said amount and interest thereon in cash to Builder at such place as Builder may designate as follows:

(a) \$593,821.63 upon the execution hereof; and

(b) \$2,363.092.85 ("the Conditional Sale Indebtedness") together with interest thereon or on so much thereof as from time to time remains unpaid at the rate of 11.875% per annum in sixty quarterly installments of \$84,814.68 each, commencing on the 1st day of July, 1976, and on the 1st day of each October, January, April and July thereafter (or if any such day is not a business day, on the next following business day) until the Conditional Sale Indebtedness and the interest thereon shall have been paid in full."

"All payments provided for in this Agreement shall be made in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts. All payments made pursuant to (b) above shall be applied first to accrued interest at the rate herein specified and the balance to the Conditional Sale Indebtedness. Except as provided in Section 18 hereof Railroad shall not have the privilege of prepaying any portion of the Conditional Sale Indebtedness prior to the date it becomes due. Railroad agrees at any time upon request by Builder or its assignee to execute a promissory note evidencing the then unpaid balance of the Conditional Sale Indebtedness and the interest thereon and the payments to be made thereunder as herein set forth."

(3) Section 4 of the Conditional Sale Agreement, entitled Taxes, is hereby supplemented by adding at the end thereof the following:

"Railroad will also pay promptly all such taxes, fees, assessments, charges, fines or penalties which may be imposed upon the Equipment or for the use or operation thereof or upon the earnings arising therefrom or upon Builder solely by reason of its ownership thereof. If any such taxes, fees, assessments, charges, fines or penalties shall have been charged or levied against Builder directly and paid by Builder, Railroad shall reimburse Builder upon the presentation of an invoice therefor and any amounts so paid by Builder shall be secured by and under this Agreement."

(4) Section 5 of the Conditional Sale Agreement, entitled Title to the Equipment, is hereby supplemented by adding at the end thereof the following:

"Any and all additions to the Equipment, and any and all parts installed on and additions and replacements made to any unit of the Equipment shall constitute accessions to the Equipment and shall be subject to all the terms and conditions of this Agreement and included in the term 'the Equipment' as used in this Agreement."

"Except as otherwise specifically provided herein, when Builder shall have been paid the full Conditional Sale Indebtedness, together with interest and all other payments as herein provided, and all Railroad's obligations herein contained shall have been performed, absolute right to possession of, title to, and property in the Equipment shall pass to and vest in Railroad without further transfer or action on the part of Builder. At such time Builder shall at the request and expense of Railroad execute to Railroad a bill of sale for the Equipment as is, where is and without warranty of any kind except only that the Equipment is free from all liens and incumbrances created by Builder."

(5) Section 6 of the Conditional Sale Agreement entitled, Marking of the Equipment, is hereby supplemented by adding at the end thereof the following:

"The identifying numbers shall be those set forth in Section 1 of the Conditional Sale Agreement. Railroad will not permit the indentifying number of any unit of the Equipment to be changed except in accordance with a statement of new number or numbers to be substituted therefor, which statement previously shall have been filed with Builder and filed, recorded, or deposited on behalf of Railroad in all public offices where this Agreement shall have been filed, recorded, or deposited. Except as provided in this paragraph, Railroad will not allow the name of any person, association or corporation to be placed on any unit of the Equipment as a designation that might be interpreted as a claim of ownership."

(6) Section 8 of the Conditional Sale Agreement, entitled Indemnities, is hereby deleted in its entirety and the following added in lieu thereof:

"8. Indemnities. Railroad shall indemnify, protect and hold harmless Builder from and against all losses, damages, injuries, liabilities, claims, and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including but not limited to counsel fees and expenses, penalties and interest, arising out of or as the result of the entering into or the performance of this Agreement, the retention by Builder of title to or a security interest in the Equipment, the ordering,

acquisition, use, operation, condition, purchase, delivery, rejection, storage or return of any unit of the Equipment, any accident in connection with the operation, use, condition, possession, storage or return of any unit of the Equipment resulting in damage to property or injury or death to any person during the period when title thereto remains subject to this Agreement or the transfer of title to the Equipment by Builder pursuant to any of the provisions of this Agreement, except, however, any losses, damages, injuries, liabilities, claims and demands whatsoever arising out of any tort, breach of warranty or failure to perform any covenant hereunder by Builder. This covenant of indemnity shall continue in full force and effect notwithstanding the full payment of the Conditional Sale Indebtedness and the conveyance of title to the Equipment, or the termination of this Agreement in any manner whatsoever. Railroad will bear the responsibility for and risk of, and shall not be released from its obligations hereunder in the event of, any damage to or the destruction or loss of any unit of or all the Equipment."

(7) Section 10 of the Conditional Sale Agreement, entitled Assignments is hereby supplemented by adding at the end of the first paragraph thereof the following:

"Upon any such assignment and the delivery of a counterpart or copy of such assignment to Railroad, such assignee shall by virtue of such assignment acquire all of the assignor's right, title and interest in and to the Equipment and this Agreement subject only to such reservations as may be contained in such an assignment. From and after such assignment and delivery of such counterpart or copy to Railroad, all payments to be made by Railroad hereunder shall, to the extent so assigned, be made to the assignee in such manner as it may direct."

(8) Section 10 of the Conditional Sale Agreement, entitled Assignments, is hereby further amended and supplemented by deleting from the last paragraph thereof the following:

"shall not be subject to any defense, setoff, counterclaim or recoupment whatsoever arising out of any breach of any obligation of the Builder."

and adding in lieu thereof the following:

"as well as any other rights under the Conditional Sale Agreement which may be so assigned, shall not be subject to any defense, setoff, counterclaim or recoupment whatsoever, or exception of Builder from any indemnity made by Railroad, arising out of any breach of any obligation of Builder, including any obligation of Builder with respect to the Equipment or the manufacture, construction, delivery or warranty thereof, or with respect to any indemnity herein contained, nor subject to any defense, setoff, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to Railroad by Builder or by reason of any act or omission on the part of Builder. Any such obligation, howsoever arising, shall be and remain enforceable by Railroad against and only against Builder."

(9) Section 11 of the Conditional Sale Agreement, entitled Remedies, is hereby deleted in its entirety and the following added in lieu thereof:

"11. Defaults and Remedies. Any one or more of the following events shall constitute an event of default under this Agreement:

(a) Failure to pay in full any installment of the Conditional Sale Indebtedness and the interest thereon or any other sum payable by Railroad hereunder as provided in this Agreement within five (5) days after the payment thereof shall be due hereunder; or

(b) Failure to observe and perform any other covenant or agreement to be observed or performed by Railroad hereunder which failure continues for thirty (30) days after written notice of such failure is given to Railroad by Builder;

(c) Institution of bankruptcy, reorganization, arrangement, insolvency or liquidation proceedings, or other proceedings for relief under any bankruptcy law or similar law for the relief of debtors, against Railroad or Guarantor, and if instituted against Railroad or Guarantor, are consented to or are not dismissed within sixty (60) days after such institution;

(d) A trustee or receiver is appointed for Railroad or Guarantor for the substantial part of its respective property and not discharged within sixty (60) days after such appointment;

(e) Railroad or Guarantor becomes insolvent or admits in writing its inability to pay its debts as they mature, or makes an assignment for the benefit of creditors or applies or consents to the appointment of a trustee or receiver for it or a major part of its respective property; or

(f) Guarantor makes default in its obligations under the Guaranty.

Railroad shall promptly notify Builder of any event which has come to its attention which constitutes or with the giving of notice or the lapse of time or both would constitute an event of default under this Agreement.

"At any time during which an event of default has occurred and is continuing, Builder may, at its option, exercise any one or more of the following rights and remedies:

(a) Declare the entire unpaid Conditional Sale Indebtedness together with interest thereon to be immediately due and payable without further demand and cause any lease of the Equipment then in effect to be immediately terminated, and upon such declaration, Builder shall be entitled to recover judgment for the entire unpaid balance of the Conditional Sale Indebtedness with interest thereon and expenses in connection therewith (including attorneys' fees), and to collect such judgment out of any assets of Railroad wherever situated;

(b) Take immediate possession of the Equipment or any one or more units thereof without liability to return to Railroad any sums theretofore paid and free from all claims whatsoever, and may remove the same from possession and use of Railroad or any other person, and for such purpose may enter upon the premises of Railroad or other

premises where the Equipment may be located and may use and employ in connection with such removal any supplies, services and aids and any available trackage or other facilities of Railroad. If Builder shall designate a reasonable point or points for the delivery of the Equipment to Builder, Railroad shall at its own expense and risk, forthwith in the usual manner cause the Equipment to be moved to and assembled at such location and shall there deliver the Equipment to Builder; and upon request by Builder, Railroad shall furnish for a period not to exceed 150 days, without charge or rent for storage, the necessary facilities at any point or points reasonably selected by Builder to store the Equipment until it has been disposed of by Builder. The agreements set forth in this subparagraph (b) are of the essence of this Agreement, and upon application to any court having equity jurisdiction, Builder shall be entitled to a decree of specific performance of such provisions. Railroad hereby expressly waives any and all claims against Builder for damages of whatsoever nature in connection with any retaking of any unit of the Equipment in a reasonable manner;

(c) Builder may elect to retain the Equipment in satisfaction of the unpaid Conditional Sale Indebtedness and interest thereon and dispose of the Equipment as Builder shall deem best. Builder shall give Railroad written notice of its election to retain the Equipment at least thirty (30) days prior to any disposal of the Equipment by Builder;

(d) Builder may at its election and upon reasonable notice to Railroad, with or without retaking possession of the Equipment, sell the Equipment or any one or more units thereof in one lot or in separate lots without the necessity of gathering at the place of sale the property to be sold free from any and all claims of Railroad at public or private sale, provided that if Railroad shall tender full payment of the total unpaid Conditional Sale Indebtedness together with interest thereon and expenses incurred by Builder in arranging for such sale (including reasonable attorneys' fees) the

possession of and title to the Equipment shall pass to Railroad. Builder may purchase at any such sale or sales. The proceeds of any such sale or other disposition, less the attorneys' fees and any other expenses incurred by Builder in re-taking possession of, removing, storing, holding, preparing for sale and selling or otherwise disposing of the Equipment, shall be credited on the amount due to Builder under the provisions of this Agreement;

(e) Builder shall have and may exercise any of the rights and remedies of a secured party under the Uniform Commercial Code of Alabama (regardless of whether such code or a law similar thereto has been enacted in a jurisdiction wherein the rights or remedies are asserted);

(f) Builder may exercise such one or more other rights it may have at law or in equity or otherwise to enforce its rights hereunder.

"Railroad will pay all reasonable expenses, including attorneys' fees, incurred by Builder in enforcing its remedies under this Agreement.

"If after applying all sums of money realized by Builder under the remedies herein provided, there shall remain any amount due it under the provisions of this Agreement, Railroad shall pay the amount of such deficiency to Builder upon demand, and if Railroad shall fail to pay such deficiency, Builder may bring suit therefore and shall be entitled to recover a judgment therefore against Railroad. If after applying the aforesaid all sums realized by Builder, there shall remain a surplus in the possession of Builder, such surplus shall be paid to Railroad or to such person as may be entitled thereto.

"Each and every power and remedy hereby specifically given to Builder shall be in addition to every other power and remedy herein specifically given or now or hereafter existing at law or in equity, and each and every power and remedy may be exercised from time to time and simultaneously and as often and in such order as may be deemed expedient by Builder. All such powers and remedies shall be cumulative and the exercise of any one shall not be deemed a waiver of the right to exercise any other. No delay or omission of Railroad in the exercise of any such power or remedy and no renewal or extension of payment hereunder shall impair any such power or remedy or shall be construed to be a waiver of any default hereunder.

Builder's acceptance of any payment after it shall become due shall not be deemed to alter or affect Railroad's obligations hereunder with respect to any subsequent payments."

(10) Section 13 of the Conditional Sale Agreement, entitled Insurance, is hereby supplemented by adding at the end thereof the following:

"Such insurance shall name as an additional insured and loss payee Builder and shall provide that it cannot be canceled except upon thirty (30) days prior written notice to Builder."

(11) Section 14 of the Conditional Sale Agreement, entitled Law of Governing, shall be supplemented by adding at the end thereof the following:

"Provided, however, that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act and any rights arising out of the marking on the units of the Equipment as herein provided."

(12) The Conditional Sale Agreement is hereby supplemented by adding as section 18 thereof the following:

"18. Casualty Occurrence and Prepayment. In the event that any unit of the Equipment shall be worn out, lost, stolen, destroyed, or irreparably damaged, from any cause whatsoever, or taken or requisitioned by condemnation or otherwise (such occurrences being herein called "Casualty Occurrences"), Railroad shall promptly after it shall have determined that such unit has suffered a Casualty Occurrence, notify Builder fully as to the details thereof. On the next succeeding date on which a quarterly installment becomes due, Railroad shall pay to Builder a sum equal to that portion of the purchase price of such unit remaining unpaid on the date of such payment plus interest accrued thereon as of such date. For the purpose of this section, each payment made in respect of the Equipment pursuant to paragraph 3 of this Agreement shall be deemed to be a payment on each unit of the Equipment in like proportion as the original purchase price of such unit bears to the aggregate original purchase price of the Equipment. Any money paid to Builder pursuant to this paragraph shall be applied to prepay without penalty or premium, ratably in accordance with the unpaid balance of each installment, the Conditional Sale Indebtedness. Any condemnation payments or insurance proceeds received by Builder in respect of a unit suffering a Casualty Occurrence shall be deducted from the amount payable by Railroad to Builder in respect of such Casualty Occurrence. Upon the

payment by Railroad to Builder of the sum required to be paid pursuant to this paragraph with respect to a unit of the Equipment suffering a Casualty Occurrence, title to such unit and the absolute right to possession thereof shall pass to Railroad without further action on the part of Builder."

(13) The Conditional Sale Agreement is hereby supplemented by adding as section 19 thereof the following:

"19. Reports and Inspections. On or before March 31, in each year, commencing with the year 1977, Railroad shall furnish to Builder an accurate statement (a) setting forth as at the preceding December 31, the amount, description and numbers of all units of Equipment then subject to this Agreement, the amount, description and numbers of any unit of the Equipment that has suffered a Casualty Occurrence or has been withdrawn from use and such other information regarding the condition, use and state of repair of the Equipment as Builder may reasonably request, and (b) stating that the numbers and markings required by section 6 of the Conditional sale Agreement have been preserved or replaced. Builder shall have the right to inspect the Equipment and Railroad's records with respect thereto at any reasonable time.

"Railroad will furnish to Builder (c) as soon as available and in any event within ninety (90) days after the end of the first, second and third quarterly accounting periods in each fiscal year of Railroad, copies of the balance sheet as of the end of such accounting period and copies of the related statements of income and retained earnings of Railroad for the portion of its fiscal year ending with the last day of such quarterly accounting period, all in reasonable detail and stating in comparative form the figures for the corresponding period in the previous fiscal year; and (d) as soon as available and in any event within 120 days after the end of each fiscal year of Railroad copies of the balance sheet of Railroad and of the related statements of income and retained earnings for such fiscal year, all in reasonable detail and stating in comparative form the consolidated figures as of the end of and for the previous fiscal year, and certified by Railroad's independent and public accountants."

(14) The Conditional Sale Agreement is hereby supplemented by adding as section 20 thereof the following:

"20. Prohibition Against Liens. Railroad will pay or discharge all sums claimed by any party from through or under Railroad which if unpaid might become a lien, charge or security interest on or with respect to the Equipment or any unit thereof equal or superior to Builder's security interest therein, provided that Railroad shall not be required to pay or discharge any such claim so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings and the non-payment does not adversely effect the security interest of Railroad in or to the Equipment."

(15) The Conditional Sale Agreement is hereby supplemented by adding as section 21 thereof the following:

"21. Possession and Use. Railroad, so long as an event of default shall not have occurred and be continuing hereunder, shall be entitled to the use and possession of the Equipment, but only upon and subject to all the terms and conditions of this Agreement. Railroad shall not permit any unit of the Equipment to be used in any service involving the regular operation and maintenance thereof outside the continental United States."

(16) The Conditional Sale Agreement is hereby supplemented by adding as section 22 thereof the following:

"22. Notice. Any notice hereunder to any of the parties designated below shall be deemed to be properly served if delivered or mailed as follows:

(a) To Builder at:

4760 Northwest Front Avenue
Box 3616
Portland, Oregon 97208

(b) To Railroad at:

Two Embarcadero Center,
San Francisco, California 94111
Attn: President

(c) To Assignee at:

Post Office Box 2554
Birmingham, Alabama 35290

or to such other address as may have been furnished in writing by such party to the other parties hereto."

(17) The Conditional Sale Agreement as hereby amended and supplemented is hereby ratified and confirmed.

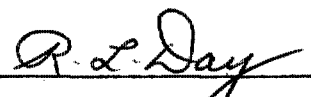
(18) This instrument may be executed in any number of counterparts all of which shall constitute one and the same agreement.

IN WITNESS WHEREOF the parties hereto have executed or caused this instrument to be executed under the respective seals of the undersigned all as of the date first above written.

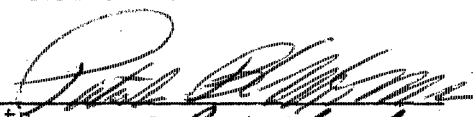
FMC CORPORATION

By 
Its VICE PRESIDENT

ATTEST:


Assistant Secretary

SSI RAIL CORP.

By 
Its Vice President

ATTEST:



STATE OF ILLINOIS)
:
COOK COUNTY)

Robert B. Hoffman On this 29th day of March, 1976, before me personally appeared ~~Daniel G. Smith~~, to me personally known, who, being by me duly sworn, says that he is a Vice President of FMC Corporation, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its board of directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

[NOTARIAL SEAL]

Deborah A. Dennis
Notary Public My Commission Expires January 9, 1979
My Commission Expires: _____

STATE OF CALIFORNIA)
CITY AND COUNTY OF :
SAN FRANCISCO)

On this _____ day of March, 1976, before me personally appeared Patrick B. McManus, to me personally known, who, being by me duly sworn, says that he is a Vice President of SSI Rail Corp., that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its board of directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

[NOTARIAL SEAL]



Terri J. Stubblefield
Notary Public
My Commission Expires: May 13, 1979